

## Employees Can Be Required to Arbitrate FLSA Claims

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The Fair Labor Standards Act (FLSA) does not bar agreements stating that individual arbitration is the "only forum" for employment claims, the Sixth Circuit recently held. In *Gaffers v. Kelly Services*, an employee alleged that his employer did not pay him for all hours worked, as required under the FLSA. The employee filed a collective action under the FLSA and over 1,600 class members joined the action. About half of those class members had signed individual arbitration agreements and the employer (Kelly Services) filed a motion to compel arbitration, which was denied.

Reversing the lower court, the Sixth Circuit rejected the employees' argument that the agreements were unenforceable. It first noted that the Supreme Court recently considered and rejected the argument that the National Labor Relations Act rendered individual arbitration agreements unenforceable. The Court then concluded that the FLSA's collective action provision, which permits but does not require employees bring collective actions, did not prohibit individual arbitration agreements.

**What does this mean for employers?** Carefully drafted individual arbitration agreements could provide employers with a valuable tool to avoid potentially costly collective and class action litigation. Employers considering drafting and implementing arbitration agreements should contact their Miller Canfield attorney.